

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

-----x
UNITED STATES OF AMERICA,

v.

CIVIL NO. 97-271 (GAG)

CARLOS GUTIERREZ NARANJO,

Defendant,
-----x

MOTION FOR WRIT OF MANDAMUS
TO COMPLY WITH THIS COURT ORDER OF FEB. 4, 2008.

INTRODUCTION:

COMES NOW, defendant pro se at FCI Fort Dix, NJ, files this motion for writ of mandamus to comply with court order of February 4, 2008.

JURISDICTION:

The district court has jurisdiction pursuant to 28 USC §1361 and under the Administrative Procedure Act (APA) 5 USC 702-706.

BACKGROUND:

The full and complete background information in this case appears in the published opinion in U.S. v. Gutierrez Naranjo, 534 F.Supp.2d 246 (D.Puerto Rico 2008).

ARGUMENT:

On February 4, 2008, this court adopted the magistrate report and recommendation for the return of property motion filed by the defendant after full and complete litigation which appears in the publication opinion. U.S. v. Gutierrez Naranjo, 534 F.Supp.2d 246 (D.Puerto Rico 2008). The order that was granted in part and denied in part, directs the United States

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to return the defendant's forty-two feet trailer.

The defendant sent a notice by United States Postal Service certified mail return receipt no. 7006 2760 0000 3040 7314 to Ms. Maritza Gonzalez Rivera, Assistant United States Attorney requesting for an arrangement be made so as to pick up the trailer by a designee, and on the other hand if it has been sold, to credit the defendant's prison commissary account with a check in the cost value of the trailer within 30 days from the date of the notice. No response was received by the defendant till date.

Section 1361 F.R.Civ.P. 28 USC provides as follows:

"The district court shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

See, Soler v. Scott, 942 F.2d 597 (9th Cir. 1991).

In the Administrative Procedure Act (APA) 5 USC §702 provides as follows:

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof . . ."

Soler v. Scott, 942 F.2d at 605.

The Soler court concluded that an individual has standing

to bring a claim under the APA if "the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute . . . in question." citing, Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970).

In this instant case, the United States Attorney's office has refused to deliver the defendant's trailer this court order of February 4, 2008, directed. The defendant's effort to avoid involving the court to enforce the compliance of the court order by sending a notice, certified mail return receipt to Ms. Maritza Gonzalez Rivera, Assistant United States Attorney on or about Mary 31, 2008 was ignored. The defendant believes his interest in the trailer is protected by this court order of February 4, 2008.

Therefore, the defendant moves this Honorable court to direct the office of the United States Attorney to turn-over the defendant's trailer to his designee within 30 days from the date of such order or in the alternative send a check to cover the cost value of the trailer into the defendant's prison commissary account if sold within the said period.

CONCLUSION:

For the reason[s] stated relief be granted.

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Respectfully Submitted,

A handwritten signature in cursive script, reading "Carlos Gutierrez Naranjo", written over a horizontal line.

Carlos Gutierrez Naranjo

Reg. No. 31804-039

FCI Fort Dix

P.O.Box 2000

Fort Dix, NJ 08640.

May 15, 2008.

PROOF OF SERVICE

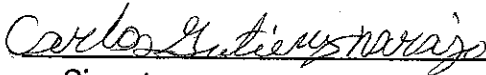
I certify that on 05-16-08 (date) I mailed a copy of this brief and all attachments via first class mail to the following parties at the addresses listed below:

Maritza Gonzalez Rivera
Assistant United States Attorney
350 Chandon Avenue
San Juan Puerto Rico 00918-1767.

PROOF OF SERVICE FOR INSTITUTIONALIZED OR INCARCERATED LITIGANTS

In addition to the above proof of service all litigants who are currently institutionalized or incarcerated should include the following statement on all documents to be filed with this Court:

I certify that this document was given to prison officials on 05-16-08 (date) for forwarding to the Court. I certify under penalty of perjury that the foregoing is true and correct. 28 U.S.C. §1746.


Signature

Dated: 05-16-08